

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Randy M. McCormick et al.

Title: CAPILLARY ELECTROKINESIS BASED CELLULAR ASSAYS

Serial No. 09/642,607

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United States Patent and Trademark Office

P.O. Box 979070

St. Louis, MO 63197-9000

Notification Of Loss Of Entitlement To Small Entity Status

Under 37 CFR 1.27(g)(2) and

**Notification of Error In Payment As A Small Entity Status and Request that Error
Be Excused Under 37 CFR 1.28(c)**

Sir:

This paper is being filed pursuant to 37 CFR 1.27(g)(2) and 37 CFR 1.28(c).

37 CFR 1.27(g)(2) states:

(g) (2) Notification of loss of entitlement to small entity status is required when issue and maintenance fees are due. Notification of a loss of entitlement to small entity status must be filed in the application or patent prior to paying, or at the time of paying, the earliest of the issue fee or any maintenance fee due after the date on which status as a small entity as defined in paragraph (a) of this section is no longer appropriate. The notification that small entity status is no longer appropriate must be signed by a party identified in § 1.33(b). Payment of a fee in other than the small entity amount is not sufficient notification that small entity status is no longer appropriate.

37 CFR 1.28(c) states:

c) How errors in small entity status are excused. If status as a small entity is established in good faith, and fees as a small entity are paid in good faith, in any application or patent, and it is later discovered that such status as a small entity

was established in error, or that through error the Office was not notified of a loss of entitlement to small entity status as required by § 1.27(g)(2), the error will be excused upon: compliance with the separate submission and itemization requirements of paragraphs (c)(1) and (c)(2) of this section, and the deficiency payment requirement of paragraph (c)(2) of this section:

(1) Separate submission required for each application or patent. Any paper submitted under this paragraph must be limited to the deficiency payment (all fees paid in error), required by paragraph (c)(2) of this section, for one application or one patent. Where more than one application or patent is involved, separate submissions of deficiency payments (e.g., checks) and itemizations are required for each application or patent. See § 1.4(b).

(2) Payment of deficiency owed. The deficiency owed, resulting from the previous erroneous payment of small entity fees, must be paid.

(i) Calculation of the deficiency owed. The deficiency owed for each previous fee erroneously paid as a small entity is the difference between the current fee amount (for other than a small entity) on the date the deficiency is paid in full and the amount of the previous erroneous (small entity) fee payment. The total deficiency payment owed is the sum of the individual deficiency owed amounts for each fee amount previously erroneously paid as a small entity. Where a fee paid in error as a small entity was subject to a fee decrease between the time the fee was paid in error and the time the deficiency is paid in full, the deficiency owed is equal to the amount (previously) paid in error;

(ii) Itemization of the deficiency payment. An itemization of the total deficiency payment is required. The itemization must include the following information:

(A) Each particular type of fee that was erroneously paid as a small entity, (e.g., basic statutory filing fee, two-month extension of time fee) along with the current fee amount for a non-small entity;

(B) The small entity fee actually paid, and when. This will permit the Office to differentiate, for example, between two one-month extension of time fees erroneously paid as a small entity but on different dates;

(C) The deficiency owed amount (for each fee erroneously paid); and

(D) The total deficiency payment owed, which is the sum or total of the individual deficiency owed amounts set forth in paragraph (c)(2)(ii)(C) of this section.

(3) Failure to comply with requirements. If the requirements of paragraphs (c)(1) and (c)(2) of this section are not complied with, such failure will either: be treated as an authorization for the Office to process the deficiency payment and charge the processing fee set forth in § 1.17(i), or result in a requirement for

compliance within a one-month non-extendable time period under § 1.136(a) to avoid the return of the fee deficiency paper, at the option of the Office.

Facts

In accordance with the above-identified rules, Applicant presents the following relevant facts.

When this application was filed on December 10, 2003, the inventors were under an obligation to assign all of their rights in the application to Aclara Biosciences Inc. ("ACLARA") and an assignment was subsequently recorded with the United States Patent and Trademark Office (USPTO). ACLARA was entitled to small entity status.

ACLARA merged with and into Apollo Merger Subsidiary, LLC (APOLLO) on December 10, 2004. APOLLO merged with and into Virologic, Inc. (VIROLOGIC) on March 18, 2005. VIROLOGIC merged with and into Monogram Biosciences, Inc (MONOGRAM) on September 6, 2005. MONOGRAM was entitled to small entity status.

MONOGRAM was acquired by Laboratory Corporation of America Holdings ("LABCORP") on August 3, 2009 as reported in LABCORP's 10-K Annual Report as filed with the United States Securities and Exchange Commission for quarterly period ended September 30, 2009. See attached Exhibit. LABCORP is not entitled to small entity status. In accordance with 37 CFR 1.27(g)(2), notification of loss of small entity status must be given to the USPTO when paying fees. Applicants are notifying the USPTO of the loss of entitlement to small entity status in the application. Accordingly, the twelfth year maintenance fee should be paid as a large entity.

Applicant believes that an additional fee is necessary in the amount of \$1425 as the deficiency of the eighth year maintenance fee for a large entity. Further, in accordance with 37 CFR 1.28(c), Applicants respectfully request that the erroneous payment of small entity fees be excused.

Remarks

In accordance with 37 CFR 1.28(c)(2), Applicants hereby authorize the Commissioner to charge a deficiency payment of \$1425 to Deposit Account No. 20-1430.

This deficiency payment was calculated, pursuant to 37 CFR 1.28(c)(2)(ii)(A-D), as follows:

Type of Fee Erroneously Paid	Current Fee Amount for Non- Small Entity	Small Entity Fee Paid	Date Paid	Deficiency Owed
8 th Yr Maintenance Fee	\$2850	\$1425.	03/02/2011	\$1425
Total Deficiency Owed:				\$1425

Applicants believe that no additional fee other than the fees discussed above is necessary; however, should a fee be deemed to be necessary, the Commissioner is hereby authorized to charge any fees required by this action or any future action to Deposit Account No. 20-1430.

Should there be any questions relating to the instant application, the Patent Office is invited to telephone the undersigned at (336) 607-7315 to discuss any issues.

Respectfully submitted,

Date: 1-29-2013


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